

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE K		PAGE OF PAGES 1 4			
2. AMENDMENT/MODIFICATION NO. 0005			3. EFFECTIVE DATE February 4, 2005		4. REQUISITION/PURCHASE REQ. NO. N/A		5. PROJECT NO. (If applicable)		
6. ISSUED BY CODE DESC-PEB/FRANCIS MURPHY DEFENSE ENERGY SUPPORT CENTER (703) 767-8334 8725 JOHN J. KINGMAN RD., (703) 767-8506 FAX SUITE 4950 FORT BELVOIR, VA 22060-6222 francis.c.murphy@dla.mil P.P.: 1.3A			7. ADMINISTERED BY (If other than Item 6) CODE						
8. NAME AND ADDRESS OF CONTRACTOR (NO., street, city, county, State, and ZIP Code)						(ii) X		9A. AMENDMENT OF SOLICITATION NO. SP0600-04-R-0013	
								9B. DATED (SEE ITEM 11) JULY 16, 2004	
								10A. MODIFICATION OF CONTRACT/ORDER NO.	
								10B. DATED (SEE ITEM 13)	
BIDDER CODE: CAGE CODE: DUNS:			FACILITY CODE						
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS									
<p><input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [] is extended, <input checked="" type="checkbox"/> is not extended</p> <p>Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:</p> <p>(a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p>									
12. ACCOUNTING AND APPROPRIATION DATA (If required)									
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.									
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.									
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)									
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:									
D. OTHER Specify type of modification and authority)									
E. IMPORTANT: Contractor [] is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copy to the issuing office.									
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)									
<p>1. Offerors must acknowledge receipt of this amendment by filling out block 8 above and signing and dating blocks 15A., 15B., and 15C. below, and returning this document to DESC.</p> <p style="text-align: center;">SEE PAGE 2:</p>									
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.									
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)					
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA			16C. DATE SIGNED		
(Signature of person authorized to sign)				(Signature of Contracting Officer)					

2. Clause **B1.04-1, SUPPLIES TO BE FURNISHED (SHIPS' BUNKERS) (DESC APR 2003)** , Paragraph (i) is hereby revised as follows:

(i) **DELIVERY AND ORDERING PERIODS.** The period during which the Government may order and the Contractor shall deliver, if ordered, will be as specified below unless the Schedule specifies otherwise.

(1) **ORDERS:** The **ordering period** begins: April 1, 2005 and ends: March 31, 2009.

(2) **DELIVERIES:** The **delivery period** begins: April 1, 2005 and ends: April 30, 2009.

3. Clause **B19.27-2, ECONOMIC PRICE ADJUSTMENT - ESTABLISHED CATALOG PRICE OR MARKET PRICE – OTHER THAN PUBLICATIONS (SHIPS' BUNKERS) (DESC JUL 1999)**, is hereby added to the solicitation. **This clause applies to items in India only.** Offers for the requirements in India are closed. Clause B19.27-2 appears in its entirety at the end of this amendment.

4. **All other terms and conditions of the solicitation remain unchanged.**

The following clause applies to items in India only:

B19.27-2 ECONOMIC PRICE ADJUSTMENT - ESTABLISHED CATALOG PRICE OR MARKET PRICE - OTHER THAN PUBLICATIONS (SHIPS' BUNKERS) (DESC JUL 1999)

(a) **WARRANTIES.** The Contractor warrants that--

(1) The unit prices set forth in this contract do not include allowances for any portion of the contingency covered by this clause;

and

(2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) **DEFINITIONS.** As used throughout this clause, the term--

(1) **Award price** means the original contract price including incremental pricing grids. It is annotated as **Awarded Unit Price** in any DESC price adjustment notification issued by contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC**.

(2) **Base reference price** means one that (1) is an established **catalog** or **market** price for a commercial items sold in substantial quantities to the general public, (2) meets the criteria of subsection 15.404-1 of the Federal Acquisition Regulation, and (3) is the net price after applying any standard trade discounts or any temporary voluntary allowances offered by the Contractor. This price will be specified in the Table in (f) below and in the attachment entitled POSTING HISTORY WORKSHEET (worksheet instructions are included with the attachment). The **base reference date** annotated in the Table in (f) below shall remain unchanged throughout the life of the contract.

(3) **Adjusting reference price** means the current established price as described in (2) above, in effect on the calendar week of the date of delivery, used to determine the change between the two. The term further means the preselected reference price for an item as provided on the date nearest in time **on or prior to** the effective calendar date as expressed in (5) below. This is annotated as **New Ref. Price** in any DESC price adjustment notification issued through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC**.

(4) **Current unit price** means the most current unit price including alpha designated incremental pricing grids in effect for the week that the escalation provisions discussed herein begin. This price shall be the unit price charged to the Government for supplies delivered under this contract and will be expressed as **Latest Unit Price** in any DESC price adjustment notification issued through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC**.

(5) **Date of delivery** means the date and time product is received by the requesting activity/vessel. This constitutes signature of receipts by the Government representative for the entire delivery. A single delivery that began on one date and ended on another date shall be considered as received on the date of completion and annotated by the Government on the bunker delivery document. Excusable delays in delivery shall be handled on a case-by-case basis by the Contracting Officer.

(c) **ADJUSTMENTS.** Subject to the provisions of this clause, the prices payable hereunder shall be determined by adding to the award price the same number of cents, or fraction thereof, that the reference price increases or decreases, per like unit of measure as the award price.

(1) **NOTIFICATION.** The Contractor shall notify the Contracting Officer, in writing, of any and all changes in the reference price within 15 days from the effective date of such change. **Failure to provide increases and decreases in the reference price shall be a material breach of contract.** The price change notification shall include appropriate explanations and documentation as required by the Contracting Officer, including, for--

(i) **CHANGE IN SUPPLIER'S PRICE** -- a copy of the Contractor's supplier's invoice, which clearly shows the supplier's name, date of sale, quantity, price, and description of product.

(ii) **CHANGE IN CONTRACTOR'S POSTED PRICE** -- a written documentation sufficient to justify such change. Documentation shall include, but not be limited to, the actual supplier-published fuel prices (rack, terminal, truck, etc.) clearly annotated for the fuel type to be procured and the effective date of the price change. In the event the Contracting Officer determines the justification insufficient to warrant such a change, the Contractor will be notified within three working days of DESC's receipt of the price change notification. The Contractor shall continue performance under this contract until the situation is resolved in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract.

(iii) **CALCULATIONS.** For U.S. locations, prices must be in U.S. gallons extending to six decimal places, truncated. For overseas locations, the prices must be in metric tons extended to two decimal places, truncated. For domestic contract line items, conversions from metric tons to gallons shall be utilized through the CONVERSION FACTORS clause for the applicable publication reference product. Barrels shall be converted using the CONVERSION FACTORS clause for barrels to gallons. The above shall apply unless cited differently in the Table in (f) below.

(2) **PRICE ADJUSTMENT NOTIFICATIONS/MODIFICATIONS.** Any resultant price changes shall be executed by the Contracting Officer via notification through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC** in accordance with the following:

(i) The effective date of the price change modification will be the date of the latest posting issued or change in the reference price issued on or prior to the date of delivery.

(ii) **DECREASES.** If the Contractor fails to notify the Contracting Officer of any decrease in the reference price within the allotted 15-day period, such decrease shall apply to deliveries made on or after the effective date of such decrease. However, if any overpayment is made to the Contractor as a result of the Contractor's failure to give timely notice to the Contracting Officer of any decrease in the reference price,

the Contractor shall be charged interest on such overpayment from the date of the overpayment to the date of reimbursement by the Contractor for the overpayment in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract.

(iii) **INCREASES.** Any increase in unit price as a result of an increase in the reference price shall apply to all deliveries made on or after the effective date of the price change issued by the Contracting Officer. However, no modification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase has been verified by the Contracting Officer.

(3) **FAILURE TO DELIVER.** Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract, or is the result of an allocation made in accordance with the terms of the ALLOCATION clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(4) **UPWARD CEILING ON ECONOMIC PRICE ADJUSTMENT.** The Contractor agrees that the total increase in any contract unit price shall not exceed 60 percent of the award price in any applicable program year (whether a single year or a multiyear program), except as provided hereafter:

(i) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with an appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(d) **EXAMINATION OF RECORDS.** The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(e) **FINAL INVOICE.** The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(f) **TABLE.**

I	II	III	IV	V
		If company - name of product; If publication - heading under which reference price is published <u>and name of product</u>	Location where reference price is applicable	Base reference price as of <u>02 June 2004</u> (base ref. date) (excludes all taxes)
<u>Item no.</u>	<u>Name of company/ publication</u>			